

Exhibit 2

Subject: Following Up
Date: Monday, August 23, 2021 at 1:29:59 PM Eastern Daylight Time
From: Edward Krugman
To: Quinn,Robert E
CC: Claudia Wilner, Darius Charney, cezie, Keisha Williams, jjoachim@cov.com, Anjana Malhotra
Attachments: COB213829 (Sample HU-SF OT Report).pdf, COB217919 (Sample SF-HU OT Report).pdf, Consent Order re discovery.docx, image001[1].png, Schedule A to 8-2021 NYS DMV Subpoena re DL Addresses.pdf, Schedule A-1 to 8-2021 DMV Subpoena.pdf, Schedule A-2 to 8-2021 NYS DMV Subpoena re DL Addresses.pdf

Rob

My condolences again, and I hope your time in Florida went as well as it could. Based on your e-mails of 8/12 we had understood we would hear from you by 8/18, but we would understand if your family matters took longer to resolve than expected.

In any event, we need to move this along. Your failure to fulfill your repeated promises to respond in writing to my e-mail of July 20 (now over a month ago!) meant that our conference on August 5 was less productive than it should have been, but it is now time to bring all those issues to closure. Attached to this e-mail is a proposed consent Order that we propose to ask Judge Reiss to enter. To the extent you disagree with anything in the Order, please send us a redline with your proposed changes, no later than COB Wednesday. We currently intend to move on any area where the parties do not agree, but a final decision must, of course, await our review of your redline.

On ESI, you asked questions about one or two custodians but did not object specifically to any of them, and the only specific search terms you questioned were those related to speed cameras and stop receipts. Aside from that, you simply pronounced yourself unpersuaded and said you did not think additional searches were worth the expense. You said you would get back to us with more detail on the expense issue, but you have not done that.

There are a few additional matters that are not covered by the proposed consent order and are addressed here:

1. You told us that Mr. Giammaresi had retired, and you would inquire into whether ECAC has counsel. Do they? In light of Mr. Giammaresi's misrepresentation in ECAC's Rule 45 letter, we intend to move to compel production under the ECAC subpoena of Mr. Giammaresi's e-mails to and from the BPD with respect to his dcjs.state.ny.us e-mail address and any such address that may have been used by Messrs. Wrona or Schellinger or Ms. Billanti. (The consent order addresses their BPD e-mail addresses.)

2. We obviously need to extend the discovery deadline again. Three months from the current deadline will be December 8. Please confirm that we may inform the Court that the request for extension is on consent.

3. You asked to see the DMV subpoena that we will ask Judge Reiss to order. It is attached (the schedules only; the cover page will have a response date that is 14 days from service). Please let us know whether you consent (and if not, why not).

4. The other to-do for Plaintiffs was to send you examples of the Housing Unit and Strike Force Overtime Reports for you to follow up on. They are attached. I've .pdf'd them for your convenience. Each was produced as a native Excel document attached to an e-mail one Bates number before the indicated number on the file.

I look forward to hearing from you, by COB Wednesday, with either signoff on the consent order or a redline with your proposed changes.



Edward P. Krugman

Senior Attorney (he/him/his)

National Center for Law and Economic Justice

275 Seventh Avenue, Suite 1506, New York, NY 10001-6860

direct: 646-680-8912 | krugman@nclej.org | www.nclej.org

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

CONSENT ORDER RE DISCOVERY

ON CONSENT of the parties, and good cause appearing therefor, it is hereby **ORDERED** pursuant to Rules 16, 26, and 37 of the Federal Rules of Civil Procedure as follows:

1. ***Form of Production.*** All production of electronically stored information (ESI) by Defendant City of Buffalo (the “City”) shall include metadata at the same level of detail as was produced on May 17 and May 31, 2021.

2. ***ESI Searches of Additional Custodians To Be Performed Now.*** The City shall perform searches of the ESI of the custodians set forth in this paragraph (the searches to include both e-mails and other ESI), with the search terms indicated, and shall produce the responsive documents located thereby.

(a) Search Terms

- (i) The search terms to be used consist of a set of “core terms,” which apply to every custodian, plus additional custodian-specific terms as set forth below.
- (ii) Each of these terms includes certain equivalents, as set forth in Exhibit A hereto.
- (iii) The “core terms” are check-point, road-block, impound, tint, tow, discriminat, rac, profil, bias, revenue, road check, zero tolerance, numbers, stop receipt/report, school/speed zone.

(b) Custodians

- Chief Carmen Menza: Core terms, plus housing, strike-force, hot pocket, hotspot
- Lt. Robbin Thomas: Core terms, plus east side, traffic-stop, complain*, Internal Affairs Department (IAD)
- P.O. William Macy: Core terms
- Deputy Comm'r Joseph Gramaglia: Core terms, plus traffic-stop, lawsuit, strike-force, summons, budget, hot pocket, hotspot, high crime, violent crime, high visibility, traffic/roadway safety
- Michael DeGeorge: Core terms
- Insp. Robert Rosenswie: Core terms plus traffic-stop, strike-force, summons, Hy, Hassett, Zak.
- Insp. Harold McClellan: Core terms plus traffic-stop, strike-force, summons, Hy, Hassett, Zak.

Production under this paragraph shall be complete by September 30, 2021.

3. ***Additional ESI Searches for Custodians Previously Searched.*** The City shall conduct additional searches of the ESI (both e-mail and non-e-mail) of custodians previously searched, and produce the responsive documents located thereby, as follows:

<i>Custodians</i>	<i>Search Terms</i>
Brown, Lockwood, Rinaldo, Serafini, Young	school/speed zone, zero tolerance, numbers, stop receipt/report, traffic/roadway safety, Hy, Hassett, Zak
Helfer, Morgera, Russo, Wilcox, McLean, Burke, Quinn, Strobele	school/speed zone, zero tolerance, numbers, stop receipt/report
Derenda, Brinkworth	High visibility, zero tolerance, numbers, Hy, Hassett, Zak
Mann, Beatty, Roberts	High visibility, zero tolerance, numbers

Production under this paragraph shall be complete by September 30, 2021.

4. ***ESI Production for Witnesses Who Will Be Deposed.*** If any of the individuals listed in this paragraph becomes a deposition witness, the City shall search for such witness's ESI (e-mai and non-e-mail) and shall produce responsive documents no later than three weeks before

the deposition. Inclusion of an individual in this paragraph says nothing, one way or the other, about whether that individual will in fact be deposed; it simply sets forth the ESI search parameters for the witness in the event the deposition is scheduled.

- (a) The individuals are Officers M. Acquino, Domaracki, M. Healy, Hy, Hassett, Whiteford, Wigdorski, Tedesco, and Miller, and Chief Barba.
- (b) For all individuals except Chief Barba, the search terms are the core terms plus east-side, traffic-stop, complain*, and Internal Affairs Department (IAD).
- (c) For Chief Barba, the search terms are the core terms plus housing, strike-force, hot pocket, hotspot, complain*.

5. ***Drafts of JAG Applications:*** The City shall search for all drafts of the applications for Judicial Assistance Grants for the period 2011 to the present, as well as e-mails or other correspondence relating to the drafting process, and shall produce such non-privileged documents and/or ESI as are located. The search shall include at least the physical and electronic files of Maureen Oakley and any other physical or electronic files specifically identified to the JAGs. Production under this paragraph shall be complete by September 30, 2021.

6. ***ECAC Project Files.*** The City shall complete production by September 30, 2021, of all Erie Crime Analysis Center files for projects identified as having been performed for a Chief-level or higher official of the BPD. Production shall include, as to each project, identification of the project and the BPD official for whom was conducted.

7. ***ECAC E-mail Production.*** The City shall make production as follows from all ECAC-related e-mail accounts to which it has access:

- (a) Custodians:
 - Wrona
 - Schellinger
 - Billanti
 - Giammaresi

- (b) Scope:
- e-mails to or from BPD e-mail addresses hitting the search terms below
 - internal e-mails between any of the three analysts and Mr. Giammaresi hitting any of those search terms
- (c) Search terms:
- full original set, plus
 - hot pocket, hot spot, high visibility, zero tolerance, road check, roadway safety, traffic

The City shall complete ECAC e-mail production no later than September 30, 2021. Production shall include all responsive e-mails from Jamie.giammaresi@dcjs.state.ny.us unless by September 30, 2021, the City submits an affidavit stating that it does not have, and never has had, access to that account.

8. The City shall, by September 30, 2021, complete production of any paper or electronic files specifically identified to any of the iterations of the GIVE (Gun-Involved Violence Elimination) program, or its predecessor IMPACT program, that were maintained by regular attendees at the periodic GIVE or IMPACT meetings.

9. **ENTCAD Database.** In order to permit Plaintiffs to assess the need for further production, and in light of the the City's representation that there is no field list or coding manual for the ENTCAD (Dispatch) database, the City shall, no later than September 15, 2021, produce every entry in the ENTCAD database for (a) June 24, 2015 and (b) April 27, 2017. Production shall be on an attorneys'-eyes-only basis and shall be used by Plaintiffs' counsel solely for the purpose of determining the scope of overall production to be sought from the database. If, within 30 days after production of the two sample days, the parties are unable to reach agreement on the scope of overall production to be made from the ENTCAD database, the matter shall be submitted to the Court on papers for resolution.

10. ***Housing Unit/Strike Force Overtime Reports.*** The City shall complete production of all such reports (January 1, 2012 to the present) no later than September 30, 2021.

11. ***Native Production of Prior .pdfs.*** To the extent, but only to the extent, that e-mails produced as .pdfs prior to May 17, 2021 have been segregated and are available without needing to redo the searches that led to their production, the City shall re-produce those e-mails in native format, including attachments and metadata, together with an affidavit describing in general terms which e-mails met the availability criteria of this paragraph and which did not.

12. ***RFP ##97-99.*** For each current or former BPD employee whom Plaintiffs depose in this action the City shall search for, and produce no later than seven days before the deposition, all documents responsive to Requests 97-99 that relate to that witness, provided that Requests 97(i) and 97(ii) are limited to complaints and BPD misconduct investigations concerning racial profiling, biased policing, checkpoints, towing/impound, and traffic enforcement. This production is in addition to any that may be required by paragraph 4 of this Order.

13. ***RFP #100.*** No later than September 15, 2021, the City shall provide to counsel for Plaintiffs the IA Pro summaries for the cases (involving Officers Hassett and Hy) that Counsel for Plaintiffs obtained from the Erie County District Attorney's Office and forwarded to Counsel for the City on June 25, 2021. The parties shall then attempt to reach agreement on what, if any, further production of IAD files is necessary; absent such agreement, the matter shall be submitted to the Court on papers for resolution.

14. ***IA Pro Files re Lost/Destroyed IAD Files.*** No later than September 30, 2021, the City shall produce the complete IA Pro records for each of the IAD files that has been identified previously as destroyed.

15. **COMPSTAT/GIVE Reports.** Pending the Court's resolution of the COMPSTAT/GIVE redaction issue (*see* Plaintiffs' letter to Chambers dated May 7, 2021 and ECF ##97, 98), and no later than September 10, 2021, Defendant City will produce redacted versions of the subject COMPSTAT and GIVE Reports.

Dated: August xx, 2021

United States District Judge

Consented To:

/s/ Robert E. Quinn

Assistant Corporation Counsel
65 Niagara Square, 11th Floor
Buffalo, New York 14202
Tel.: (716) 851-4326
rquinn@city-buffalo.com

Attorney for Defendants

/s/ Edward P. Krugman

Claudia Wilner
Edward Krugman
NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE
275 Seventh Avenue, Suite 1506
New York, NY 10001
212-633-6967
wilner@nclej.org
krugman@nclej.org

/s/ Jordan S. Joachim

Jordan Joachim
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018
212-841-1000
jjoachim@cov.com

/s/ Keisha A. Williams

Joseph Keleman
Keisha Williams
WESTERN NEW YORK LAW CENTER
Cathedral Park Tower
37 Franklin Street, Suite 210
Buffalo, NY 14202
Tel: (716) 828-8415
Fax: (716) 270-4005
jkeleman@wnylc.com
kwilliams@wnylc.com

/s/ Darius Charney

Darius Charney

Chinyere Ezie

CENTER FOR CONSTITUTIONAL RIGHTS

666 Broadway, 7th Floor

New York, NY 10012

212-614-6475

DCharney@ccrjustice.org

CEzie@ccrjustice.org

Attorneys for Plaintiffs

EXHIBIT A TO CONSENT ORDER RE DISCOVERY

Each of the search terms below includes the equivalents listed.

Search Term	Includes
bias	bias, biased
BPD-HU	BPD-HU, HU
budget	budget, budgets, budgetary
camera	camera, cameras
check-point	check-point, checkpoint, check point, checkpoints, check points
complain*	complain, complainant, complained, complaint, complaints, complt
crackdown	crackdown, crack down
discriminat	discriminate, discriminates, discriminated, discriminatory, discrimination
east-side	eastside, east side
Erie Crime Analysis Center (ECAC)	Erie Crime Analysis Center, ECAC
high crime	high crime, high-crime, highcrime
high visibility	high visibility
hot pocket	hotpocket, hot pocket, hotpockets, hot pockets
Hotspot	hotspot, hot spot, hotspots, hot spots
housing	housing
impound	impound, impounds, impounded
Internal Affairs Department (IAD)	Internal affairs, IAD
law-suit	lawsuit, law suit, lawsuits, law suits, law-suit
numbers	numbers (plural only; “number” is not a hit)
profil	profile, profiled, profiling
quota	quota, quotas
rac	race, racial, racist, racism
revenue	revenue, revenues
road check	road check, roadcheck, road checks, road check, road-check, road-checks

Search Term	Includes
road-block	roadblock, road block, roadblocks, road blocks, road-block, road-blocks
roadway safety	roadway safety, roadway-safety
safety-check	safety check, safety checks
school/speed zone	school zone, speed zone
stop receipt/report	stop receipt, stop receipts, stop report, stop reports
strike-force	strikeforce, strike force, SF, strike-force
summons	summons, summonses
ticket	ticket, tickets, ticketing
tint	tint, tints, tinted
tow	tow, towed
traffic safety	traffic safety, traffic-safety
traffic-stop	traffic stop, traffic stops
violent crime	violent crime, violent crimes
zero tolerance	zero tolerance

CERTIFICATE OF SERVICE

I hereby certify that on August xx, 2021, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Edward P. Krugman